IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

WP(C).No. 36529 of 2004(W)

PETITIONER:

JAYACHANDRAN,
S/O.KUNNATHULLY RAMAKRISHNA PANICKER,
PONALLUR DESOM, MANALUR VILLAGE, THRISSUR TALUK.

BY ADV. SRI.D.ANIL KUMAR

RESPONDENT:

KAMALAKSHY,
W/O.THAZHATH VEETTIL KARAPPAN,
PANDARAPARAMBE DESOM, OLLUKKARA VILLAGE,
THRISSUR TALUK.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 36529/04)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF THE ORDER IN I.A.NO.1141/01 IN O.S.NO.1173/97 DATED 20.8.2001.

EXT.P2: TRUE COPY OF THE ORDER IN I.A.NO.1142/01 IN O.S.NO.1173/97 DATED 20.8.2001.

EXT.P3: TRUE COPY OF THE JUDGMENT IN C.M.APPEAL NO.669/02 DATED 3.8.2004 OF THE DISTRICT JUDGE, THRISSUR.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.36529 of 2004

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Dated: 7th August, 2007

JUDGMENT

In this Writ Petition under Article 227 of the Constitution the petitioner impugns Ext.P1, P2 and P3 orders and seeks a direction to allow I.A.Nos.1141/01 and 1142/01 in O.S.No.1173/97 on the file of the Munsiff's Court, Thrissur. These I.As. were filed by the petitioner who was the defendant in the suit in question for setting aside the ex parte decree and for condonation of delay caused in the matter. Both the I.As. were dismissed and the appeal preferred by the petitioner was also dismissed by the learned District Judge under Ext.P3.

2. Learned counsel for the petitioner invited my attention to my own judgment of this court in W.P.C.No.1447 of 2005. In W.P.C.No.1447 of 2005 the present petitioner had impugned similar orders by which application for restoration of a connected suit filed by him was dismissed after refusing to condone the day caused in the matter of filing the application. In that case also the learned District Judge had confirmed the order passed by the learned Munsiff, dismissing the application for restoration and application for condonation of delay. The orders which were impugned in W.P.C.No.1447/05 and in the present case were identical and were

passed on the same day. After hearing both sides I allowed W.P.C.No.1447 of 2005 imposing very stringent terms on the respondent. Having regard to the decision I took in W.P.C.No.1447/05 and taking into account the circumstance that though the respondent is served with notice, she has not entered appearance, I allow this Writ Petition also. Exts.P1, P2 and P3 orders are set aside and it is ordered that I.A.Nos.141 & 142 of 2001 filed by the petitioner will stand allowed on condition that the petitioner pays a sum of Rs.3000/- to the respondent directly or through the counsel appearing for her in the court below within one month of receiving a copy of this judgment and pays a further sum of Rs.1000/- by way of additional cost to the Kerala High Court Legal Services Committee within the aforementioned time limit. If payments are not made as above, the impugned orders will stand confirmed and the Writ Petition will stand dismissed. If payments are made and the order setting aside the impugned orders becomes operative, the trial court will post O.S.No.1173 of 1997 and continue with the trial of that suit from the stage at which the petitioner was set ex parte.

srd **PIUS C.KURIAKOSE, JUDGE**